

REMARKS

Status of the Claims

Claims 1-6 are presented. Claim 1 is amended to correct an obvious error in the lower limit of the range of the sum (a) + (b). Support is found throughout the specification. No claims are cancelled. No new claims are added.

No new matter has been introduced.

Summary of the Invention as Claimed

The invention as now claimed is directed to **nanoemulsions** and to articles containing the nanoemulsion. An important aspect of the invention as now claimed in the requirement of a composition having a **mean particle diameter of 20 to 250 nm**. The composition includes as components (a) 5-50% of at least one alkyl and/or alkenyl oligoglycoside carboxylic acid salt; and (b) 10-50% of an oil component, where the sum of components (a) + (b) is 15% to 55% by weight of the composition as a whole.

Another aspect of the invention as claimed is an article impregnated with the above nanoemulsion, specifically a wet wipe (claims 4-5).

Yet another aspect of the invention as claimed is a cosmetic formulation incorporating the above nanoemulsion (claim 6).

Nonstatutory Double Patenting Rejection

Claims 1-6 were provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-8 of co-pending US Patent Application No. 10/589,773, Attorney Docket No. C 2818 PCT/US1, in view of Simonnet et al. (US 6,689,371; "Simonnet").

Although applicants do not necessarily agree with the Examiner's characterizations of Simonnet or the substantive basis for the rejection, applicants note that this rejection is provisional, as it must be, since there has not

an indication of allowable subject matter either in the present application or in the cited application. Accordingly, the filing of a disclaimer at this time is not required. In the event that allowable subject matter is indicated by the Examiner in connection with respect to either the present application or the cited application, Applicants will consider at that time the possibility of filing a Terminal Disclaimer under 37 CFR 1.321(c).

Rejections under 35 U.S.C. § 112, second paragraph

Claims 1-6 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. In claim 1 component (a) was specified at a minimum of 5% of the alkyl/alkenyl oligoglycoside carboxylic acid salt of formula (I), and oil component (b) was specified at a minimum of 10%, but the sum of components (a) + (b) was specified at a minimum of 10%, which was an obvious error. In response, claim 1 has been amended to recite the lower limit of the sum of (a) + (b) is 15%.

In view of this amendment the Examiner is respectfully requested to withdraw the indefiniteness rejection.

Rejections under 35 U.S.C. § 103(a)

Claims 1-3 and 6 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Milstein et al. (WO 99/24538; "Milstein") in view of Simonnet, and claims 4-5 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Milstein in view of Simonnet, further in view of Weuthen et al. (US Publication No. 2003/0124373; "Weuthen"). Applicants respectively traverse each of these rejections.

As mentioned above, the invention as now claimed is directed to **nanoemulsions** and to articles containing the nanoemulsion. An important aspect of the invention as now claimed in the requirement of a composition having a **mean particle diameter of 20 to 250 nm**. Furthermore, claims required that the nanoemulsion comprises at least one alkyl and/or alkenyl

oligoglycoside carboxylic acid salt, and at least about 10% by weight of an oil component. None of the items cited by the Examiner discloses or even suggests the subject matter of these claims.

Milstein is directed to a surfactant and a personal care product containing a surfactant of a particular formulation. However, in contradistinction to the present claims, there is no disclosure or suggestion in Milstein of nanoemulsion, much less a nanoemulsion having a specific mean particle size as required by the present claims. Not only does Milstein fail to teach or suggest these two important claim requirements, it fails to disclose a specific amount of the oil component, as acknowledged by the Examiner. Furthermore, even the examples of Milstein (pages 24-29) show formulations with oil contents much less than the 10% minimum required by the claims now pending. Indeed one advantage of applicants' **nanoemulsions** is the ability to incorporate relatively large amounts of oil components.

Simonnet does disclose nanoemulsions. Importantly, however, Simonnet discloses a nanoemulsion comprising sugar fatty acid esters and/or ethers. Simonnet **does not disclose** the alkyl/alkenyl oligoglycoside carboxylate salts as required by the present claims. Applicants' sugar surfactants are **anionic** surfactants, whereas those of Simonnet are **nonionic**, having a different charge state. It is not obvious that one skilled in the art at the time of the invention could even produce nanoemulsions from anionic surfactants based on the disclosure of Simonnet using the components of Milstein. Thus, the citation of Simonnet fails to overcome the substantial deficiencies of Milstein.

As observed by the Examiner, the combined teachings of Simonnet and Milstein do not specifically teach a wet wipe impregnated with a nanoemulsion.

Weuthen discloses a moist wipe impregnated with linear and/or branched alcohol polyglycol ethers which must contain at least one mole of propylene oxide ($y = 1-40$), preferably in combination with alkyl oligoglucosides. Weuthen does not disclose the alkyl/alkenyl oligoglycoside carboxylate salts of applicants. In addition, Weuthen requires specific alcohol polyglycol ethers for the wet wipes

of his invention, in contrast to applicants' care articles/wipes (instant claims 4 and 5). Also, Weuthen does not disclose nanoemulsions. Thus the deficiencies of Milstein and Simonnet are not cured by adding Weuthen.

In summary, no combination of Milstein, Simonnet and/or Weuthen would lead one skilled in the art at the time the invention was made, to applicants' invention without the benefit of applicants' disclosure. This is impermissible hindsight reconstruction.

Conclusion

In view of the above claim amendments and remarks, applicants believe that the pending claims as amended are in condition for allowance. The Examiner is respectfully requested to reconsider, withdraw the rejections and allow the claims.

If any additional fees are required in support of this application, authorization is granted to charge our Deposit Account No. 50-1943.

Respectfully submitted,

Date: February 1, 2009

/Joseph F. Posillico/
Joseph F. Posillico
Reg. No. 60,851
Fox Rothschild LLP
2000 Market Street; Tenth Floor
Philadelphia, PA 19107-3291
Tele: (215) 299-2000
Fax: (215) 299-2150

RNH:pmf